

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Numbering Resource Optimization

CC Docket No. 99-200

XSPEDIUS PETITION FOR TEMPORARY WAIVER

Xspedius Management Co., LLC and its various operating entities ("Xspedius") (which recently purchased assets of e.spire Communications, Inc. ("e.spire")), pursuant to Section 1.3 of the Commission's rules,¹ respectfully requests a temporary waiver of the February 1, 2003 deadline for submitting its Numbering Resource Utilization and Forecast Report, FCC Form 502 ("NRUF Report") as mandated by Section 52.15(f)(6)(i) of the Commission's rules.² Specifically, Xspedius requests an extension of the February 1 deadline until it is able to complete implementation of a new Telephone Number Inventory ("TNI") database. As shown below, Xspedius will not be able to comply fully with the Commission's reporting requirements by the February 1 deadline due to unexpected delays in the implementation of its new TNI database. Accordingly, Xspedius respectfully requests that the Commission grant a waiver of the reporting deadline to allow Xspedius to file an accurate and complete NRUF report as soon as possible, and in any event, no later than May 1, 2003.

¹ 47 C.F.R. § 1.3.
47 C.F.R. § 52.15(f)(6)(i).

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I. UNIQUE CIRCUMSTANCES WARRANT GRANT OF THE REQUESTED WAIVER

Pursuant to Section 1.3 of the Commission's rules,³ the Commission may waive application of any of its rules for good cause shown. As the courts have observed, an "agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances."⁴ Accordingly, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." Further, application of a general rule may not be in the public interest if extended to a party whose proposal "will not undermine the policy served by the rule that has been adjudged in the public interest." Accordingly, the FCC "must take a 'hard look' at applications for waiver and must consider all relevant factors."⁷

Xspedius satisfies the "good cause" standard for grant of a waiver.⁸ The unique circumstances that led Xspedius to file this petition would make strict application of the reporting deadline inconsistent with the public interest. Until August 1, 2002, Xspedius— which, since June 1,

³ 47 C.F.R. § 1.3.

⁴ *WALT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *WALT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁷ *Part 68 Waiver Requests of Telephone Equipment Supply, Inc., Casio Communications, Inc., Tandy Corporation, Atlinks USA, Inc., Matsushita Electric Corporation of America, Vtech Communications Limited, Cidco Incorporated, Atlinks USA, Inc., Atlinks USA, Inc.*, 15 FCC Rcd 9015 (2000).

⁸ See 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("The FCC has authority to waive its rules if there is 'good cause' to do so.").

2002, has been operating certain assets of e.spire Communications, and which closed on those assets on August 30, 2002 – manually developed NRUF reports, relying upon antiquated data manipulation methodologies. This process was time-consuming, expensive, prone to human error and difficult to verify for accuracy. Immediately after filing the August 1, 2002 report, Xspedius began making the modifications necessary to implement a customized and automated database: the TNI database. The new TNI database will allow Xspedius to manage its numbering resources more efficiently, to generate and file NRUF reports on a more automated basis, and to verify the accuracy of its NRUF reports. Although Xspedius is close to completing the implementation of the TNI database, Xspedius will not be able to complete this process before the February 1, 2003 reporting deadline. However, Xspedius will be able to complete the implementation process and file its NRUF report no later than May 1, 2003.

A number of unique circumstances have complicated and delayed the efforts of Xspedius to implement the TNI database. Specifically, the process of designing and integrating the TNI database into the new OSS systems of Xspedius, which itself was implemented only in August, 2002, has proven to be much more labor intensive than initially predicted. Moreover, the personnel available to address unexpected complications and delays have been severely limited by the events that Xspedius and its predecessor e.spire have experienced during the past year. For more than one year, e.spire operated as a debtor-in-possession under the bankruptcy laws.⁴ On June 5, 2002 the United States Bankruptcy Court, Delaware District, approved an agreement between e.spire, Thermo Telecom Partners LLC and Xspedius Management Co., LLC (“Xspedius”). Pursuant to the terms of the agreement, e.spire transferred virtually all of its local, long distance, international, data and

⁴ e.spire filed a voluntary petition for Chapter 11 protection with the United States Bankruptcy Court for the District of Delaware on March 22, 2001. A Sale Order approving the transaction covered by this Application was entered by the Bankruptcy Court on June 5, 2002.

Internet assets and services in the states of Alabama. Arizona, Arkansas, Colorado, District of Columbia. Florida, Georgia, Kansas. Kentucky, Louisiana, Maryland, Missouri. New Mexico, Nevada. Oklahoma. South Carolina, Tennessee. Texas and Virginia to Xspedius on September 1, 2002.¹⁰ Despite the limited personnel available to implement the TNI database and the change of management that occurred during its implementation, Xspedius expects to complete the implementation process shortly after February 1, 2003. Xspedius will be able to generate and file an accurate NRUF report shortly thereafter.

Under these unique circumstances, grant of the requested waiver will not undermine the policies served by the reporting requirement. Indeed, the public interest will be served by grant of the waiver because Xspedius will be able to provide the Commission with accurate data about its numbering utilization and to manage its numbering resources more efficiently. Xspedius further submits that the waiver will speed the availability of accurate data. because the extra time provided by the waiver will allow Xspedius to ensure that the data it reports is accurate and complete. The need for accurate utilization data, of course, is the fundamental reason that the FCC adopted the reporting requirement. As the Commission has explained,

[a]ccurate data is necessary for properly monitoring the use and allocation of numbering resources, to assist state commissions with area code relief proceedings, and to assist the North American Numbering Plan Administrator (NANPA) in projecting numbering resource exhaust and carrying out its other duties."

¹⁰ e.spire facilities and customers in New York and Pennsylvania are not **part of the sale** to Xspedius and will be the subject of separate arrangements.

¹¹ *Numbering Resource Optimization; Petition of Teligent, Inc. for Extension of Time to file the Numbering Resource Utilization/Forecast (NRUF) Report FCC Form 502*, 16 FCC Rcd 14768, ¶ 6 (2001)(granting extension of time to carrier under Chapter 11 bankruptcy protection).

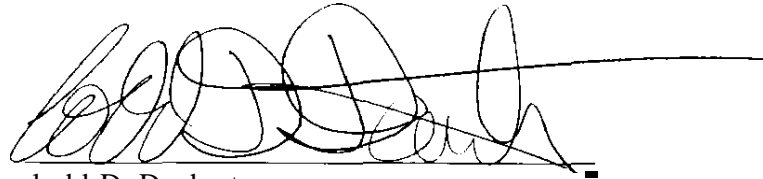
Accordingly, the waiver is necessary to ensure that the Commission's goal of accurate data is satisfied, which serves the public interest. Therefore, the requested waiver would not harm the public interest

CONCLUSION

Based on the foregoing, Xspedius submits that good cause exists for a temporary waiver of 47 C.F.R. § 52.15(f)(6)(i) so that Xspedius will have until May 1, 2003, to complete and file an NRUF Report based on its December 31, 2002 inventory. The requested temporary waiver would enable Xspedius to complete the efforts necessary to gather accurate data, which ultimately will assist NANPA to analyze code utilization trends and predict code exhaust accurately

Respectfully submitted,

Xspedius Management Co., LLC

A handwritten signature in black ink, appearing to read "Iodd D. Daubert", is written over a horizontal line. The signature is stylized and cursive.

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January 23, 2003